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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:
Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

Comments of MCI WorldCom, Inc.

MCI WorldCom, Inc. ("MCI WorldCom") files these comments in opposition to the Petitions for Reconsideration filed in the above referenced docket by the Federal Bureau of Investigation and Department of Justice ("FBI/DOJ") October 25, 1999 and November 12, 1999.¹

In its October 25th petition regarding the SSI Order, the FBI/DOJ asks the Federal Communications Commission ("Commission") to reconsider its decision not to mandate that carriers generate an automated message enabling law enforcement agencies ("LEA") to verify that unauthorized electronic surveillance is not occurring. Additionally, the FBI/DOJ asks the Commission to require carriers to notify LEA as soon after discovery as is reasonable in light of privacy and safety concerns and the needs of law enforcement.

The Commission has already considered the FBI/DOJ's desire to have an automatic tone provide assurance that illegal surveillance is not being conducted and

¹ Petition for Reconsideration of Section 105 Report and Order (Systems Security and Integrity Order or "SSI" Order), regarding In the Matter of Communications Assistance for Law Enforcement, Report and Order, CC Docket No. 97-213 released March. 15, 1999 and Petition for Reconsideration and/or Clarification regarding In the Matter of Communications Assistance for Law Enforcement, Second Report and Order, CC Docket 97-213, released August 31, 1999, FCC 99-229.

ruled in its Third Report and Order² that the request was not part of the mandate placed on telecommunications carriers by Section 103. Now the FBI/DOJ is trying a different tactic, saying such a capability is part of Section 105 responsibilities. Regardless of the section the FBI/DOJ attempts to slide the function under, the Commission is right in saying such surveillance monitoring is not mandated by CALEA³ and must stay the course. Not only is such a capability not envisioned by CALEA, the FBI/DOJ seeks to impose an impossible construct on carriers: to affirm that no authorized activity is taking place. The FBI/DOJ asks an impossible burden. The FBI/DOJ also seeks to overreach its authority to seek such entrée into carriers' facilities. Such an imposition is not contemplated legislatively in CALEA.

The FBI/DOJ also desires carriers to notify LEA of security breaches "as soon after discovery as is reasonable in light of privacy and safety concerns and the needs of law enforcement." The FBI/DOJ takes exception to the Commission's language that breaches be reported "within a reasonable time upon discovery." The FBI/DOJ is concerned that carriers will report breaches in light of their business necessity or convenience, rather than expeditiously act to minimize the privacy and security threats that result from compromises to the security and integrity of electronic surveillance.

Carriers are well aware of the risks and dangers to the public of breached security. Security breaches can endanger the public, other personnel and the network. Carriers have nothing to gain in dragging their feet to report security breaches. Carriers know they have an affirmative obligation to report breaches but they must be allowed to be responsible to first confirm breaches did occur. Confirmation is a key concept here.

² In the Matter of Communications Assistance for Law Enforcement Act, Third Report and Order, Released August 31, 1999, FCC 99-230, para. 101, 106, 111.

Carriers must have adequate time to act responsibly and investigate what did or did not take place, to confirm what did occur, whether security breaches or technical glitches of one kind or another.

Additionally, in its November 12th petition on the Second Report and Order, the FBI/DOJ asks the Commission to clarify its statements that "...resellers' responsibility under CALEA should be limited to their own facilities. ...[R]esellers will therefore not be held responsible for the CALEA compliance responsibilities of the carrier whose services they are reselling with respect to the latter's underlying facilities." ⁴

The FBI/DOJ objects to resellers not being held responsible for CALEA compliance for facilities they don't control, which are under the control of the underlying carrier or provider who may claim not to be subject to CALEA obligations. In effect, the FBI/DOJ is asking the Commission to amend its Order to require resellers be responsible for CALEA compliance of entities not subject to CALEA. "...If the underlying carrier is regarded not to be a 'telecommunications carrier,' then the reseller should remain responsible in full for satisfying CALEA's assistance capability obligations with respect to its services (underlying in original)." ⁵ The FBI/DOJ's request is overreaching and wrong. The Commission is right and must again stay the course.

First, the statute defines who and what comes under CALEA:

"The term 'telecommunications carrier' (a) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and (b) includes (i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934...or (ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this title...but ... (C) does not include... (ii) any class

³ Communications Assistance for Law Enforcement Act, passed October 25, 1994, Pub. Law No. 103-414.

⁴ Second Report and Order, CALEA, Released August 31, 1999, par. 24.

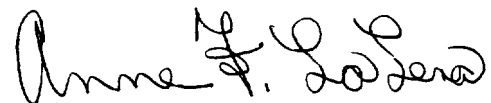
⁵ FBI/DOJ November 12th Petition, p. 3.

or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.”⁶

The FBI/DOJ is trying to require CALEA compliance for any and all classes of telecom providers through one means or another, and that simply does not comport with CALEA’s language. Second, as a practical matter, resellers have no control whatsoever over the platform or network which supplies underlying service. Resellers simply cannot unilaterally either make such facilities compliant or require underlying providers to do so.

In conclusion, MCI WorldCom urges the Commission to reject the FBI/DOJ’s petitions as unreasonable and in conflict to the language and intent of the statute and to reaffirm the clear thinking and correct analysis in its Report and Order and Second Report and Order.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Anne F. La Lena". The signature is fluid and cursive, with the first name "Anne" being the most prominent.

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⁶ CALEA Public Law 103-414, Sec. 102, Definitions.

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I, Billie Rickert, do hereby certify that on this 7th day of February 2000, copies of the foregoing Comments of MCI WorldCom, Inc. were served on each of the following persons:

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